Backgrounder

BP-218E

THE MEECH LAKE ACCORD: THE MANITOBA AND NEW BRUNSWICK REPORTS

Mollie Dunsmuir
LAW AND GOVERNMENT DIVISION

October 1989

Library of Parliament
Bibliothèque du Parlement

Research Branch

90-05365

The Research Branch of the Library of Parliament works exclusively for Parliament, conducting research and providing information for Committees and Members of the Senate and the House of Commons. This service is extended without partisan bias in such forms as Reports, Background Papers and Issue Reviews. Research Officers in the Branch are also available for personal consultation in their respective fields of expertise.

© Minister of Supply and Services Canada 1990

Cat. No. YM32-2/218E

ISBN 0-660-13495-0

N.B. Any substantive changes in this publication which have been made since the preceding issue are indicated in **bold print**.

CE DOCUMENT EST AUSSI PUBLIÉ EN FRANÇAIS

CANADA

LIBRARY OF PARLIAMENT
BIBLIOTHÈQUE DU PARLEMENT

THE MEECH LAKE ACCORD: THE MANITOBA AND NEW BRUNSWICK REPORTS

INTRODUCTION

This paper briefly compares the reports on the 1987 Constitutional Accord by the Manitoba Task Force and the New Brunswick Select Committee. The text of the Meech Lake Accord can be found in Appendix 1, but is not included in the body of the paper. The one exception is clause 1 of the Accord (the "distinct society" clause); this is included in full because the wording and structure of that provision are central to the controversy surrounding it. The recommendations of the Manitoba Task Force are included in toto in Appendix 2, and those of the New Brunswick Committee in Appendix 3.

The Constitution Act, 1982, provides that an amendment to the Constitution on some of the subjects covered by Meech Lake must be completed within three years of authorization of the Accord by any provincial legislative assembly or Parliament. Since the legislative assembly of Quebec passed the first resolution authorizing the Meech Lake amendments on 23 June 1987, the amendments cannot be proclaimed after 23 June 1990.

THE PROCESS

Both reports dealt with the process of constitutional reform which led to the Meech Lake Accord, and both were critical of it.

A. Manitoba

The Manitoba report states that "one of the most remarkable features of the presentations [made to the Task Force] was the substantial

number which criticized the process of constitutional reform. ... Many condemned it as secretive, elitist, exclusive, hasty, unrepresentative, and undemocratic" (p. 69). The Task Force concludes that the process used had undercut the legitimacy of the Accord, and recommends that future public hearings be held at all levels after the First Ministers develop a proposal for change, and before they sign it. It also recommends that the federal government hold hearings in any province where the provincial government does not do so.

B. New Brunswick

The New Brunswick Committee considers the process which produced the Accord to be one of four main issues.(1) Most people appearing before the Committee realized that the process leading to Meech Lake was a fait accompli, but were concerned that the executive approach to constitution building would become entrenched. While accepting the importance of First Ministers' Conferences, the Committee regrets the lack of debate or public scrutiny and feels that the refusal to allow amendments to the Accord was a significant departure from basic parliamentary tradition.

The New Brunswick report recommends that the Legislative Assembly establish a Standing Committee on Constitutional Matters to consult and advise both before and after First Ministers' Constitutional Conferences, and that the Province of New Brunswick urge the Parliament of Canada and other provincial legislatures to establish simliar committees.

THE DISTINCT SOCIETY CLAUSE AND CHARTER OVERRIDE

Clause 1 of the Meech Lake Accord, which follows, would create a new section 2 for the Constitutional Act, 1867. There is no section 2 at present as the original section was repealed in 1893.

---

(1) "These included the process which produced the Accord; the relationship between the Accord's section 2 (containing the **distinct society** clause) and the Charter of Rights and Freedoms; the amending formula and the future of shared-cost programs if the Accord is approved in its present form" (p. 21).

LIBRARY OF PARLIAMENT
BIBLIOTHÈQUE DU PARLEMENT

1. The Constitution Act, 1867 is amended by adding thereto, immediately after section 1 thereof, the following section:

"2. (1) The Constitution of Canada shall be interpreted in a manner consistent with

(a) the recognition that the existence of French-speaking Canadians, centred in Quebec but also present elsewhere in Canada, and English-speaking Canadians, concentrated outside Quebec but also present in Quebec, constitutes a fundamental characteristic of Canada; and

(b) the recognition that Quebec constitutes within Canada a distinct society.

(2) The role of the Parliament of Canada and the provincial legislatures to preserve the fundamental characteristic of Canada referred to in paragraph (1)(a) is affirmed.

(3) The role of the legislature and Government of Quebec to preserve and promote the distinct identity of Quebec referred to in paragraph (1)(b) is affirmed.

(4) Nothing in this section derogates from the powers, rights or privileges of Parliament or the Government of Canada, or of the legislatures or governments of the provinces, including any powers, rights or privileges relating to language."

A. Manitoba

The Manitoba report finds that this clause "generated the most controversy and debate during the public hearings" (p. 12). The overwhelming majority of submissions were opposed to the clause in its present form, most often because they were concerned that it would divide Canada into two linguistic components and create two classes of Canadians by giving Quebec special status. Presenters were also worried about entrenching "such vague and undefined terms."

The Task Force feels that the Constitution is a symbol of our nationality and identity, and that an interpretive principle should not be limited to linguistic duality and the distinctness of Quebec. It recommends that the proposed section 2 should first confirm the distinctness of

a Canadian national identity. It should then recognize the aboriginal peoples, the linguistic duality of Canada, the existence of Quebec as a distinct society within Canada, and the existence of Canada's multicultural heritage. It is suggested this clause be known as "the Canada clause." The report states:

> The Task Force recommends that clause 1 of the 1987 Constitutional Accord be ratified only in an amended form. The Task Force recommends that clause 1 of the Constitution Amendment, 1987 be amended as follows:
>
> 1. The Constitution Act, 1867 is amended by adding thereto, immediately after section 1 thereof, the following section:
>
> **"2. (1) The Constitution of Canada shall be interpreted in a manner consistent with the recognition that the following constitute fundamental characteristics of Canada:**
>
> **(a) the existence of Canada as a federal state with a distinct national identity;**
>
> **(b) the existence of the aboriginal peoples as a distinct and fundamental part of Canada;**
>
> (c) the existence of French-speaking Canadians, centred in Quebec but also present elsewhere in Canada, and English-speaking Canadians, concentrated outside Quebec but also present in Quebec;
>
> (d) Quebec constitutes within Canada a distinct society; and
>
> **(e) the existence of Canada's multicultural heritage comprising many origins, creeds and cultures.**
>
> (2) The role of the Parliament and **Government** of Canada and the provincial legislatures **and governments to uphold** the fundamental characteristics of Canada referred to in paragraphs (1)(a), (b), (c) and (e) is affirmed.
>
> (3) The role of the legislature and Government of Quebec **to uphold** the distinct identity of Quebec referred to in paragraph (1)(d) is affirmed.

> (4) Nothing in this section derogates from the powers, rights or privileges of Parliament or the Government of Canada, or of the legislatures or governments of the provinces, including any powers, rights or privileges relating to language."

The Task Force also proposes that subclauses (2) and (3), which describe the role of Parliament and the provincial legislatures in preserving the linguistic duality of Canada and of the legislature and government of Quebec in preserving and promoting the distinctness of Quebec within Canada, should be made parallel. It recommends that the two clauses refer both to the legislatures and governments, and that the word "uphold" replace "preserve" in subclause (2) and "preserve and promote" in subclause (3). It feels that the word "uphold" implies a strong sense of commitment but no new responsibilities or powers.

B. New Brunswick

The New Brunswick report takes quite a different approach. Submissions argued that the existence of multiculturalism and aboriginal people should also be recognized as a fundamental characteristic of Canada. The Committee sympathizes, but feels that existing sections of the Charter, together with clause 16 (see below) ensured that multicultural and aboriginal rights would be protected. It does not rule out the eventual inclusion of multicultural and aboriginal recognition in section 2(1), but feels it is an issue that should be addressed at a future constitutional conference.

The phrasing of proposed section 2(1)(a), stating that linguistic duality is a fundamental characteristic of Canada, caused some concern. The territorial restriction, recognizing French-speaking Canadians as centred in Quebec but also present elsewhere in Canada, is considered too limited by the Committee. It recommends that the section be amended to refer to "the existence of French-speaking Canadians and English-speaking Canadians throughout Canada."

The New Brunswick Committee acknowledges concerns about the wording of the distinct society clause, but feels that none of them are sufficiently crucial to justify tampering with the clause. It was

LIBRARY OF PARLIAMENT
BIBLIOTHÈQUE DU PARLEMENT

influenced by the fact that the Meech Lake constitutional round was specifically to address Quebec's demands, among which the distinct society clause was paramount.

Responding to presentations that New Brunswick was also a distinct society as Canada's only officially bilingual province, the Committee notes that nothing precludes other communities from being recognized as distinct at a later date. In the interim, the Committee recommends that the Governments of New Brunswick and Canada immediately initiate the process for entrenching Bill 88, An Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick, in the Constitution of Canada. Under section 43 of the Constitution Act, 1982, this would require the approval only of Parliament and the Legislative Assembly of New Brunswick. The Committee also recommends that the legislatures and governments of both New Brunswick and Canada be given a constitutional obligation to preserve and promote New Brunswick's two linguistic communities.

The Committee acknowledges concerns about the vagueness of the term "distinct society," but feels that broad language is appropriate in a constitutional document. As with the term "free and democratic society" in the Charter, it feels that "distinct society" is capable of growth and development by the courts over time.

In accepting the distinct society clause without change, the New Brunswick Committee states its belief that the proposed section 2 neither grants new powers nor derogates from the existing powers of the provincial or federal governments. It is described as an interpretive tool which does not grant any substantive powers, and is understood as a fundamental aspiration and objective of the people and government of Quebec.

The Committee does, however, recommend changes in the wording of section 2(2). Submissions suggested that, as with Quebec in proposed section 2(3), the role of preserving the linguistic duality should involve the governments of Canada and the provinces as well as Parliament and the provincial legislatures. They also suggested that the various

LIBRARY OF PARLIAMENT
BIBLIOTHÈQUE DU PARLEMENT

governments and legislative bodies be responsible for promoting linguistic duality as well as preserving it.

The Committee recommends that proposed section 2(2) affirm the role of the government, as well as the Parliament, of Canada to promote, as well as preserve the fundamental characteristic of linguistic duality. It feels that it would be inappropriate, however, to expand the role of provincial legislatures.

THE ACCORD AND EXISTING RIGHTS AND FREEDOMS

Clause 16 of the Meech Lake Accord states that nothing in the new section 2 would affect the interpretive principles protecting aboriginal rights and the multicultural heritage affirmed in sections 25 and 27 of the Charter, the aboriginal rights affirmed in section 35, or federal jurisdiction over Indians and Indian lands.

A. Manitoba

The Manitoba report notes that concerns were raised, by women's groups in particular, that the inclusion of aboriginal and multicultural rights in clause 16 would mean that other rights, such as sex equality, would, by implication, not be protected. It was also felt that clause 16 implied a hierarchy of rights, and that its exclusion of sex equality rights could cause the courts to view sex equality as generally less important than aboriginal and multicultural rights. Finally, submissions from those concerned with women's rights argued that the refusal of 11 men to respond to concerns about women's rights and the Accord had the unintentional symbolic effect of assigning women to a second class position in Canadian society.

The Task Force also heard from representatives of civil liberties organizations and of the mentally and physically disabled, who expressed similar concerns that the equality rights under the Charter might be endangered. Like the women's groups, they suggested that clause 16

LIBRARY OF PARLIAMENT
BIBLIOTHÈQUE DU PARLEMENT

should either be deleted or amended to ensure that nothing in clause 1 abrogated or derogated from the Charter.

The Task Force agrees that Charter rights and freedoms are a symbol of national unity. Because of the importance of the issue, it feels it better to err on the side of too much protection of those rights. As requested by the majority of people making submissions, it suggests an amended clause 16 stating that nothing in the proposed section 2 to the Constitution Act, 1867, would affect the Charter. In short, the new interpretive principles would not apply to the Charter including, presumably, the decision as what rights violations were demonstrably justified in a free and democratic society.

B. New Brunswick

The New Brunswick report states that "a major issue for presenters was the need to define clearly and specifically the Charter's supremacy in the Constitution." The Committee sees this issue as the need to maintain a fair balance between collective and individual rights, and believes that existing mechanisms would allow the courts to strike the appropriate balance. It feels that to make the Charter paramount is inappropriate and unnecessary. However, in recognition of the importance that Canadians attach to the Charter, it recommends that the Charter be affirmed as a fundamental characteristic of Canada.

The New Brunswick Committee also heard from numerous people concerned with the effect that the proposed section 2 might have on sex equality rights. The Committee notes that "all those involved in the framing of the Accord have stated that it was not their intention to affect gender equality." Overall, the Committee seems to feel it unlikely that the Accord in its present state would affect gender equality rights. The Committee is, however, aware that the legal issues are complex:

> Understanding the interplay between Sections 1, 15 and 28 of the Charter, Section 52 of the Constitution Act, 1982 and Sections 2 and 16 of the Accord posed a challenge for the Committee members. (p. 49)

LIBRARY OF PARLIAMENT
BIBLIOTHÈQUE DU PARLEMENT

Overall, the Committee remained concerned about the possibility of the erosion of gender equality, as well as the perception that gender equality rights might be eroded. It recommends that a reference to section 28 of the Charter, (which guarantees Charter rights to males and females equally notwithstanding anything else in the Charter), be added to clause 16.

THE SENATE

Clause 2 of the Meech Lake Accord would entrench in the Constitution the interim agreement on the selection of Senators. Senators would be chosen from "names of persons" submitted by the government of the province involved.

A. Manitoba

The Meech Lake Accord would require unanimous approval for all constitutional amendments affecting the Senate. The Report of the Manitoba Task Force suggests that the existing amending formulas for Senate amendments be maintained; this is covered below, along with the amending formula.

The Manitoba report outlines the concerns of most of the submissions on the issue of Senate reform and the effect of the new appointing process. Most submissions felt clause 2 could impede Senate reform, because the provinces with the most Senators would then be less likely to support further Senate reform because their power to make appointments might influence federal policies in their favour. Some felt that an enhanced role for the Senate could result in legislative paralysis. Others felt that the new nomination process, together with other Meech Lake provisions, would seriously weaken the central government.

The Task Force, overall, agrees with the criticisms of the nominating process, but believes that the process is only interim. It stresses that it would not be averse to the removal of the interim Senate appointment provisions. If these were retained, however, the Task Force

LIBRARY OF PARLIAMENT
BIBLIOTHÈQUE DU PARLEMENT

states that the Yukon and the Northwest Territories should have the same right to submit names as the provinces. Finally, the report discusses Senate reform at some length and recommends the immediate creation of a Manitoba committee to study the question of Senate reform.

B. New Brunswick

The New Brunswick Committee report deals very briefly with Senate appointments. The Committee shares the concerns expressed in a number of submissions about the existing method of nomination, but feels that this could only be addressed in the context of major Senate reform. Stating that the Senate has a meaningful role in protecting regional interests, the Committee accepts clause 2 as an interim measure. It does, however, recommend that the new provincial role in Senate nominations be extended to the governments of the Yukon and Northwest Territories.

IMMIGRATION

Clause 3 sets out a rather complex procedure to constitutionalize or entrench immigration agreements between the federal government and a province. The political accord accompanying the Meech Lake Accord would commit the federal government to concluding an immigration agreement with Quebec based on certain principles.

A. Manitoba

The Manitoba Task Force has serious reservations about clause 3, but has decided against asking for an amendment. It is concerned that clause 3 could weaken the federal government, and could potentially result in new immigrants feeling stronger attachments to their provinces than to the nation as a whole. Overall, it feels their concerns could be dealt with by the revised distinct society (or Canada) clause.

The Task Force also feels it unwise to entrench in the Constitution the guarantee that Quebec will receive a number of immigrants "proportionate to its share of the population of Canada, with the right to

LIBRARY OF PARLIAMENT
BIBLIOTHÈQUE DU PARLEMENT

exceed that figure by 5% for demographic reasons." First, it wonders if some other province might receive less than its fair share to compensate for that additional 5%. Second, and more important, it wonders whether a drop in Quebec immigrants in any given year would require a lowering of the national quota. The latter fear was allayed by a federal government opinion that the "guarantee" referred to was a "best efforts" undertaking rather than a strict legal guarantee.

Although the Task Force does not recommend an amendment to the immigration provisions, it does recommend that the federal government continue to play a leading role in the immigration process. It also recommends that the provisions on immigration, and any agreements entered into, be reviewed at least every five years.

B. New Brunswick

The New Brunswick Committee, in a single page, notes the concerns of those who appeared before it; sympathizes with multicultural groups' concerns about possible discrimination if the provinces gain more autonomy over immigration policy; expresses its confidence that the Charter will protect such concerns as mobility rights, and that the federal government role as the key player in immigration policy will not alter; and affirms the Accord's treatment of the issue.

THE SUPREME COURT

Clauses 4, 5 and 6 of the Accord deal with the Judicature section of the Constitution Act, 1867. Clauses 4 and 5 would simply add new headings. Clause 6 would entrench the Supreme Court of Canada as the final court of appeal, as well as certain provisions surrounding the Court's composition, qualifications, tenure, and salary. Appointments to the Court would have to be made from lists submitted by the provinces, and Quebec would be guaranteed three judges.

LIBRARY OF PARLIAMENT
BIBLIOTHÈQUE DU PARLEMENT

A. Manitoba

The Manitoba report notes that the majority of people appearing before the Task Force had some doubts about the new appointment process, and whether the provinces might nominate only persons with a specific legal philosophy. A major concern was that there was no provision to break the deadlock in the event that the federal government found all the names submitted to be unsuitable. This was a particular concern with the Quebec appointments in that any such deadlock would affect three potential appointments. The Task Force suggests that the clause be amended to provide for a deadlock-breaking mechanism, and suggests four possible models.

The Manitoba report also recommends that the territories be allowed to nominate Supreme Court judges.

B. New Brunswick

The New Brunswick report similarly recommends that the territories be included in the process of appointments to the Supreme Court, citing briefs from the governments of the Northwest Territories and the Yukon "supported by several New Brunswick briefs which deplored the fact that the present amendment effectively shuts out territorial nominations to our highest court" (p. 53).

The New Brunswick Committee also recommends that a formal appointment process be established in each province and territory, reflecting a broad spectrum of society and including representation from the legal profession, the judiciary, the federal Department of Justice, and the provincial Attorneys-General departments.

SHARED-COST PROGRAMS

Clause 7 of the Accord would add section 106A to the Constitution Act, 1867; it would require the federal government to compensate a province that opted out of a future national shared-cost program so

LIBRARY OF PARLIAMENT
BIBLIOTHÈQUE DU PARLEMENT

long as the equivalent provincial program was compatible with national objectives.

A. Manitoba

The Manitoba report describes this as "one of the most often criticized clauses during the hearings" (p. 53). There were concerns that the clause would threaten future programs such as childcare, weaken the ability of the federal government to provide national health and welfare programs, and increase regional disparities in social services. Presenters warned that this could have serious consequences for a small, less affluent province like Manitoba.

Various amendments to the clause were suggested, including its deletion from the Accord. The Task Force recommends deleting it entirely, noting that Manitoba has played a significant role in encouraging the development of national programs.

B. New Brunswick

The New Brunswick Committee takes a different approach. After describing the serious concerns expressed about the effect that section 106A might have on national social and health programs, the Committee affirms the importance of the federal spending power:

> The Committee is in full agreement with the explicit constitutional recognition of the federal spending power in matters of exclusive provincial jurisdiction. This constitutional power is absolutely necessary if the federal government is to ensure reasonably comparable levels of public services across the country. (p. 59)

The New Brunswick Committee, however, feels that section 36(2) of the Constitution Act, 1982 could be used to resolve the problem. Section 36 deals with equalization and regional disparities and sub-section (2) states:

> Parliament and the government of Canada are committed to the principle of making equalization payments to ensure that the provincial governments have sufficient

LIBRARY OF PARLIAMENT
BIBLIOTHÈQUE DU PARLEMENT

revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation.

The New Brunswick Committee feels that if some provinces developed better services, thus increasing the basic standard of service for all Canada, section 36 puts a constitutional obligation on the federal government to ensure provincial governments had sufficient revenues to provide reasonably comparable levels of public services. Consequently it recommends that the provisions of section 36 be strictly applied, and that section 106A be accepted.

THE AMENDING FORMULA

Clauses 9, 10, 11 and 12 would affect the constitutional amending formulas. Clause 9 contains the actual changes, while clauses 10-12 consist of minor technical amendments to reflect a numbering change.

Section 40 of the Constitution Act, 1982, states that a province which opts out of an amendment transferring provincial powers over education or other cultural matters to the federal government will receive reasonable compensation. Clause 9 would extend the federal obligation to provide compensation to provinces opting out of any transfer of provincial power to the federal government.

Section 41 of the Constitution Act, 1982 lists those amendments which require unanimous consent of the provinces. Section 42 states that changes relating to proportionate representation in the House of Commons, the powers of the Senate and selection and qualifications of Senators, provincial representation in the Senate, the Supreme Court (other than the composition), the extension of new provincial boundaries and the creation of new provinces can all be made by seven provinces representing 50% of the population. Clause 9 of the Meech Lake Accord would move to section 41 all of the matters at present in section 42, with the result that such amendments would require unanimous consent.

LIBRARY OF PARLIAMENT
BIBLIOTHÈQUE DU PARLEMENT

A. Manitoba

The Manitoba report found that the expansion of the unanimity requirement to the matters now listed in section 42 was the second most contentious provision in the Meech Lake Accord. Most submissions felt that the unanimity requirements would "freeze and stultify" the Constitution. The Task Force notes that it weighed the arguments on unanimity very carefully. It agrees with those who argued that applying the unanimity provisions to amendments concerning the Senate would frustrate Senate reform and deny the aspirations of westerners. Applying those same provisions to the creation of new provinces would likely deny the aspirations of northerners. The report therefore concludes that amendments relating to the powers of the Senate, selection of Senators, residence qualifications of Senators, provincial representation in the Senate, the extension of existing provinces or the creation of new provinces should remain in section 42, and not require unanimity.

B. New Brunswick

The New Brunswick Committee feels that on the whole the matters subjected to the unanimity provisions by the Meech Lake Accord are "fundamental democratic principles and institutions of Canada and for this reason it is important that all provinces be in agreement on changes" (p. 63). The one exception is the creation of new provinces, which the New Brunswick Report recommends remain in section 42. It also recommends that the territories be consulted in the creation of new provinces.

CONSTITUTIONAL CONFERENCES

Clause 13 of the Meech Lake Accord, which would become section 50 of the Constitution Act, 1982, would provide for a yearly constitutional conference to discuss senate reform, roles and responsibilities in relation to the fisheries, and such other matters as are agreed upon.

LIBRARY OF PARLIAMENT
BIBLIOTHÈQUE DU PARLEMENT

A. Manitoba

The report of the Manitoba Task Force suggests that the majority of submissions criticized compulsory annual First Ministers' conferences because they reinforce the trend towards executive federalism and possibly stimulate provincial demands for additional power. It was also argued that aboriginal matters must be included on the agenda and aboriginal people must be invited to the conference. The omission of an invitation to the government leaders of the Yukon and Northwest Territories was regretfully noted.

The Task Force decided not to recommend deletion of the clause, however, because it serves as an avenue to Senate reform. The Task Force describes the omission of aboriginal issues from the constitutional conference agenda as a grievous error. It recommends the agenda described in section 50 be expanded to include constitutional matters that directly affect the aboriginal peoples of Canada, including the identification and definition of aboriginal rights to be included in the Constitution of Canada. A further recommended amendment would require that both aboriginal representatives and elected representatives of the governments of the Yukon Territory and the Northwest Territories be invited to constitutional conferences when appropriate.

B. New Brunswick

Submissions presented in New Brunswick expressed strong objections to fisheries jurisdiction being placed on the permanent agenda of annual constitutional conferences. Additionally, aboriginal groups and the territories sought assurance that they would be represented at future constitutional conferences. The Committee agrees that the governments of the Northwest Territories and the Yukon must be represented at First Ministers' Conferences called to discuss issues related to their interests, and that aboriginal groups must be represented at conferences to discuss aboriginal issues. It has serious doubts about a constitutionally fixed agenda, and recommends that all references to specific agendas be deleted from the Accord. It also recommends, however, that fisheries, aboriginal rights and Senate reform become priorities in constitutional discussion.

LIBRARY OF PARLIAMENT
BIBLIOTHÈQUE DU PARLEMENT

CONCLUSION

The publication of the Manitoba and New Brunswick reports on the Meech Lake Accord represents a major new development in the ongoing constitutional debate. Although the report of the Manitoba Task Force clearly suggests more amendments to the Meech Lake Accord than does that of the New Brunswick Select Committee, the range of issues discussed is similar.

APPENDIX 1

1987 CONSTITUTIONAL ACCORD

Constitution Amendment, 1987

Following is the text of the Constitutional Accord approved by the Prime Minister and all provincial Premiers on June 3, 1987, which provided the basis for submitting a resolution to Parliament and the provincial legislatures, seeking approval of the *Constitution Amendment, 1987*.*

1987 CONSTITUTIONAL ACCORD

WHEREAS first ministers, assembled in Ottawa, have arrived at a unanimous accord on constitutional amendments that would bring about the full and active participation of Quebec in Canada's constitutional evolution, would recognize the principle of equality of all the provinces, would provide new arrangements to foster greater harmony and cooperation between the Government of Canada and the governments of the provinces and would require that annual first ministers' conferences on the state of the Canadian economy and such other matters as may be appropriate be convened and that annual constitutional conferences composed of first ministers be convened commencing not later than December 31, 1988;

AND WHEREAS first ministers have also reached unanimous agreement on certain additional commitments in relation to some of those amendments;

NOW THEREFORE the Prime Minister of Canada and the first ministers of the provinces commit themselves and the governments they represent to the following:

1. The Prime Minister of Canada will lay or cause to be laid before the Senate and House of Commons, and the first ministers of the provinces will lay or cause to be laid before their legislative assemblies, as soon as possible, a resolution, in the form appended hereto, to authorize a proclamation to be issued by the Governor General under the Great Seal of Canada to amend the Constitution of Canada.

---

* While the general principles described in the introductory pages of this booklet are clear from a reading of the text, the proposed amendments include a number of technical provisions and there are frequent references to the *Constitution Acts, 1867 to 1982*. For a detailed understanding, it is therefore necessary to consult the *Constitution Acts, 1867 to 1982*, which can be found in libraries or ordered (Catalogue No. YX1-1/1986E) at a price of $4.25 each ($5.10 outside Canada) from the *Canadian Government Publishing Centre, Supply and Services Canada, Ottawa, Ontario, K1A 0S9*. Cheques and money orders are payable to the Receiver General for Canada.

2. The Government of Canada will, as soon as possible, conclude an agreement with the Government of Quebec that would

(*a*) incorporate the principles of the Cullen-Couture agreement on the selection abroad and in Canada of independent immigrants, visitors for medical treatment, students and temporary workers, and on the selection of refugees abroad and economic criteria for family reunification and assisted relatives,

(*b*) guarantee that Quebec will receive a number of immigrants, including refugees, within the annual total established by the federal government for all of Canada proportionate to its share of the population of Canada, with the right to exceed that figure by five per cent for demographic reasons, and

(*c*) provide an undertaking by Canada to withdraw services (except citizenship services) for the reception and integration (including linguistic and cultural) of all foreign nationals wishing to settle in Quebec where services are to be provided by Quebec, with such withdrawal to be accompanied by reasonable compensation,

and the Government of Canada and the Government of Quebec will take the necessary steps to give the agreement the force of law under the proposed amendment relating to such agreements.

3. Nothing in this Accord should be construed as preventing the negotiation of similar agreements with other provinces relating to immigration and the temporary admission of aliens.

4. Until the proposed amendment relating to appointments to the Senate comes into force, any person summoned to fill a vacancy in the Senate shall be chosen from among persons whose names have been submitted by the government of the province to which the vacancy relates and must be acceptable to the Queen's Privy Council for Canada.

MOTION FOR A RESOLUTION TO AUTHORIZE AN AMENDMENT TO THE CONSTITUTION OF CANADA

WHEREAS the *Constitution Act, 1982* came into force on April 17, 1982, following an agreement between Canada and all the provinces except Quebec;

AND WHEREAS the Government of Quebec has established a set of five proposals for constitutional change and has stated that amendments to give effect to those proposals would enable Quebec to resume a full role in the constitutional councils of Canada;

AND WHEREAS the amendment proposed in the schedule hereto sets out the basis on which Quebec's five constitutional proposals may be met;

AND WHEREAS the amendment proposed in the schedule hereto also recognizes the principle of the equality of all the provinces, provides new arrangements to foster greater harmony and cooperation between the Government of Canada and the governments of the provinces and requires that conferences be convened to consider important constitutional, economic and other issues;

AND WHEREAS certain portions of the amendment proposed in the schedule hereto relate to matters referred to in section 41 of the *Constitution Act, 1982*;

AND WHEREAS section 41 of the *Constitution Act, 1982* provides that an amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by resolutions of the Senate and the House of Commons and of the legislative assembly of each province;

NOW THEREFORE the (Senate) (House of Commons) (legislative assembly) resolves that an amendment to the Constitution of Canada be authorized to be made by proclamation issued by Her Excellency the Governor General under the Great Seal of Canada in accordance with the schedule hereto.

SCHEDULE

CONSTITUTION AMENDMENT, 1987

Constitution Act, 1867

1. The *Constitution Act, 1867* is amended by adding thereto, immediately after section 1 thereof, the following section:

Interpretation

"**2.** (1) The Constitution of Canada shall be interpreted in a manner consistent with

(*a*) the recognition that the existence of French-speaking Canadians, centred in Quebec but also present elsewhere in Canada, and English-speaking Canadians, concentrated outside Quebec but also present in Quebec, constitutes a fundamental characteristic of Canada; and

(*b*) the recognition that Quebec constitutes within Canada a distinct society.

Role of Parliament and legislatures

(2) The role of the Parliament of Canada and the provincial legislatures to preserve the fundamental characteristic of Canada referred to in paragraph (1)(*a*) is affirmed.

Role of legislature and Government of Quebec

(3) The role of the legislature and Government of Quebec to preserve and promote the distinct identity of Quebec referred to in paragraph (1)(*b*) is affirmed.

Rights of legislatures and governments preserved

(4) Nothing in this section derogates from the powers, rights or privileges of Parliament or the Government of Canada, or of the legislatures or governments of the provinces, including any powers, rights or privileges relating to language."

2. The said Act is further amended by adding thereto, immediately after section 24 thereof, the following section:

Names to be submitted

"**25.** (1) Where a vacancy occurs in the Senate, the government of the province to which the vacancy relates may, in relation to that vacancy, submit to the Queen's Privy Council for Canada the names of persons who may be summoned to the Senate.

Choice of Senators from names submitted

(2) Until an amendment to the Constitution of Canada is made in relation to the Senate pursuant to section 41 of the *Constitution Act, 1982*, the person summoned to fill a vacancy in the Senate shall be chosen from among persons whose names have been submitted under subsection (1) by

the government of the province to which the vacancy relates and must be acceptable to the Queen's Privy Council for Canada."

3. The said Act is further amended by adding thereto, immediately after section 95 thereof, the following heading and sections:

"Agreements on Immigration and Aliens

Commitment to negotiate

95A. The Government of Canada shall, at the request of the government of any province, negotiate with the government of that province for the purpose of concluding an agreement relating to immigration or the temporary admission of aliens into that province that is appropriate to the needs and circumstances of that province.

Agreements

95B. (1) Any agreement concluded between Canada and a province in relation to immigration or the temporary admission of aliens into that province has the force of law from the time it is declared to do so in accordance with subsection 95C(1) and shall from that time have effect notwithstanding class 25 of section 91 or section 95.

Limitation

(2) An agreement that has the force of law under subsection (1) shall have effect only so long and so far as it is not repugnant to any provision of an Act of the Parliament of Canada that sets national standards and objectives relating to immigration or aliens, including any provision that establishes general classes of immigrants or relates to levels of immigration for Canada or that prescribes classes of individuals who are inadmissible into Canada.

Application of Charter

(3) The *Canadian Charter of Rights and Freedoms* applies in respect of any agreement that has the force of law under subsection (1) and in respect of anything done by the Parliament or Government of Canada, or the legislature or government of a province, pursuant to any such agreement.

Proclamation relating to agreements

95C. (1) A declaration that an agreement referred to in subsection 95B(1) has the force of law may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized by resolutions of the Senate and House of Commons and of the legislative assembly of the province that is a party to the agreement.

Amendment of agreements

(2) An amendment to an agreement referred to in subsection 95B(1) may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized

(*a*) by resolutions of the Senate and House of Commons and of the legislative assembly of the province that is a party to the agreement; or

(*b*) in such other manner as is set out in the agreement.

Application of sections 46 to 48 of *Constitution Act, 1982*

95D. Sections 46 to 48 of the *Constitution Act, 1982* apply, with such modifications as the circumstances require, in respect of any declaration made pursuant to subsection 95C(1), any amendment to an agreement made pursuant to subsection 95C(2) or any amendment made pursuant to section 95E.

Amendments to sections 95A to 95D or this section

95E. An amendment to sections 95A to 95D or this section may be made in accordance with the procedure set out in subsection 38(1) of the *Constitution Act, 1982*, but only if the amendment is authorized by resolutions of the legislative assemblies of all the provinces that are, at the time of the amendment, parties to an agreement that has the force of law under subsection 95B(1)."

4. The said Act is further amended by adding thereto, immediately preceding section 96 thereof, the following heading:

"General"

5. The said Act is further amended by adding thereto, immediately preceding section 101 thereof, the following heading:

"Courts Established by the Parliament of Canada"

6. The said Act is further amended by adding thereto, immediately after section 101 thereof, the following heading and sections:

"Supreme Court of Canada

Supreme Court continued

101A. (1) The court existing under the name of the Supreme Court of Canada is hereby continued as the general court of appeal for Canada, and as an additional court for the better administration of the laws of Canada, and shall continue to be a superior court of record.

Constitution of court

(2) The Supreme Court of Canada shall consist of a chief justice to be called the Chief Justice of Canada and eight other judges, who shall be appointed by the Governor General in Council by letters patent under the Great Seal.

Who may be appointed judges

101B (1) Any person may be appointed a judge of the Supreme Court of Canada who, after having been admitted to the bar of any province or territory, has, for a total of at least ten years, been a judge of any court in Canada or a member of the bar of any province or territory.

Three judges from Quebec

(2) At least three judges of the Supreme Court of Canada shall be appointed from among persons who, after having been admitted to the bar of Quebec, have, for a total of at least ten years, been judges of any court of Quebec or of any court established by the Parliament of Canada, or members of the bar of Quebec.

Names may be submitted

101C. (1) Where a vacancy occurs in the Supreme Court of Canada, the government of each province may, in relation to that vacancy, submit to the Minister of Justice of Canada the names of any of the persons who have been admitted to the bar of that province and are qualified under section 101B for appointment to that court.

Appointment from names submitted

(2) Where an appointment is made to the Supreme Court of Canada, the Governor General in Council shall, except where the Chief Justice is appointed from among members of the Court, appoint a person whose name has been submitted under subsection (1) and who is acceptable to the Queen's Privy Council for Canada.

Appointment from Quebec

(3) Where an appointment is made in accordance with subsection (2) of any of the three judges necessary to meet the requirement set out in subsection 101B(2), the Governor General in Council shall appoint a person whose name has been submitted by the Government of Quebec.

Appointment from other provinces

(4) Where an appointment is made in accordance with subsection (2) otherwise than as required under subsection (3), the Governor General in Council shall appoint a person whose name has been submitted by the government of a province other than Quebec.

Tenure, salaries, etc., of judges

101D. Sections 99 and 100 apply in respect of the judges of the Supreme Court of Canada.

Relationship to section 101

101E. (1) Sections 101A to 101D shall not be construed as abrogating or derogating from the powers of the Parliament of Canada to make laws under section 101 except to the extent that such laws are inconsistent with those sections.

References to the Supreme Court of Canada

(2) For greater certainty, section 101A shall not be construed as abrogating or derogating from the powers of the Parliament of Canada to make laws relating to the reference of questions of law or fact, or any other matters, to the Supreme Court of Canada."

7. The said Act is further amended by adding thereto, immediately after section 106 thereof, the following section:

Shared-cost program

"106A. (1) The Government of Canada shall provide reasonable compensation to the government of a province that chooses not to

participate in a national shared-cost program that is established by the Government of Canada after the coming into force of this section in an area of exclusive provincial jurisdiction, if the province carries on a program or initiative that is compatible with the national objectives.

Legislative power not extended

(2) Nothing in this section extends the legislative powers of the Parliament of Canada or of the legislatures of the provinces."

8. The said Act is further amended by adding thereto the following heading and sections:

"XII—CONFERENCES ON THE ECONOMY AND OTHER MATTERS

Conferences on the economy and other matters

148. A conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada at least once each year to discuss the state of the Canadian economy and such other matters as may be appropriate.

XIII—REFERENCES

Reference includes amendments

149. A reference to this Act shall be deemed to include a reference to any amendments thereto."

Constitution Act, 1982

9. Sections 40 to 42 of the *Constitution Act, 1982* are repealed and the following substituted therefor:

Compensation

"**40.** Where an amendment is made under subsection 38(1) that transfers legislative powers from provincial legislatures to Parliament, Canada shall provide reasonable compensation to any province to which the amendment does not apply.

Amendment by unanimous consent

41. An amendment to the Constitution of Canada in relation to the following matters may be made by proclamation issued by the Governor General under the Great Seal of Canada only where authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province:

(*a*) the office of the Queen, the Governor General and the Lieutenant Governor of a province;

(*b*) the powers of the Senate and the method of selecting Senators;

(*c*) the number of members by which a province is entitled to be represented in the Senate and the residence qualifications of Senators;

(*d*) the right of a province to a number of members in the House of Commons not less than the number of Senators by which the province was entitled to be represented on April 17, 1982;

(*e*) the principle of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada;

(*f*) subject to section 43, the use of the English or the French language;

(*g*) the Supreme Court of Canada;

(*h*) the extension of existing provinces into the territories;

(*i*) notwithstanding any other law or practice, the establishment of new provinces; and

(*j*) an amendment to this Part."

10. Section 44 of the said Act is repealed and the following substituted therefor:

Amendments by Parliament

"**44.** Subject to section 41, Parliament may exclusively make laws amending the Constitution of Canada in relation to the executive government of Canada or the Senate and House of Commons."

11. Subsection 46(1) of the said Act is repealed and the following substituted therefor:

Initiation of amendment procedures

"**46.** (1) The procedures for amendment under sections 38, 41 and 43 may be initiated either by the Senate or the House of Commons or by the legislative assembly of a province."

12. Subsection 47(1) of the said Act is repealed and the following substituted therefor:

Amendments without Senate resolution

"**47.** (1) An amendment to the Constitution of Canada made by proclamation under section 38, 41 or 43 may be made without a resolution of the Senate authorizing the issue of the proclamation if, within one hundred and eighty days after the adoption by the House of Commons of a resolution authorizing its issue, the Senate has not adopted such a resolution and if, at any time after the expiration of that period, the House of Commons again adopts the resolution."

13. Part VI of the said Act is repealed and the following substituted therefor:

"PART VI

CONSTITUTIONAL CONFERENCES

Constitutional conference

50. (1) A constitutional conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada at least once each year, commencing in 1988.

Agenda

(2) The conferences convened under subsection (1) shall have included on their agenda the following matters:

(*a*) Senate reform, including the role and functions of the Senate, its powers, the method of selecting Senators and representation in the Senate;

(*b*) roles and responsibilities in relation to fisheries; and

(*c*) such other matters as are agreed upon."

14. Subsection 52(2) of the said Act is amended by striking out the word "and" at the end of paragraph (*b*) thereof, by adding the word "and" at the end of paragraph (*c*) thereof and by adding thereto the following paragraph:

"(*d*) any other amendment to the Constitution of Canada."

15. Section 61 of the said Act is repealed and the following substituted therefor:

References

"**61.** A reference to the *Constitution Act 1982*, or a reference to the *Constitution Acts 1867 to 1982*, shall be deemed to include a reference to any amendments thereto."

General

Multicultural heritage and aboriginal peoples

16. Nothing in section 2 of the *Constitution Act, 1867* affects section 25 or 27 of the *Canadian Charter of Rights and Freedoms*, section 35 of the *Constitution Act, 1982* or class 24 of section 91 of the *Constitution Act, 1867*.

CITATION

Citation

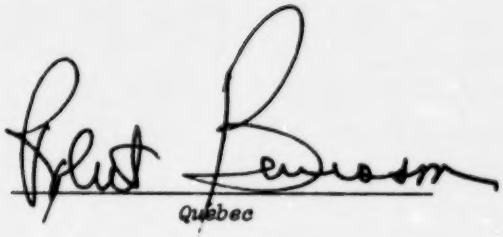
17. This amendment may be cited as the *Constitution Amendment, 1987*.

Signed at Ottawa,
June 3, 1987

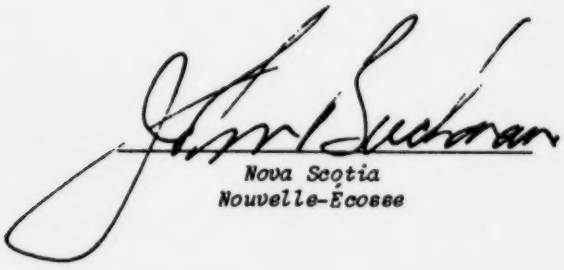
Fait à Ottawa
le 3 juin 1987

Canada

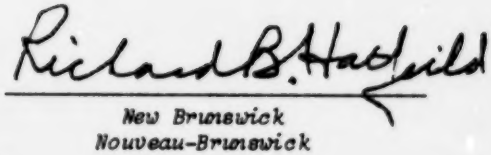
Ontario



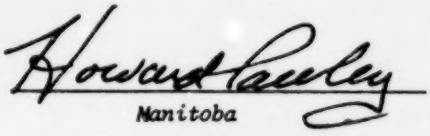
Québec



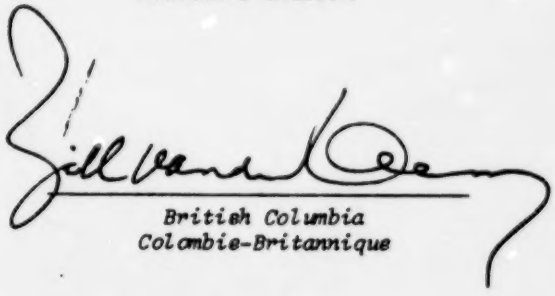
Nova Scotia
Nouvelle-Écosse



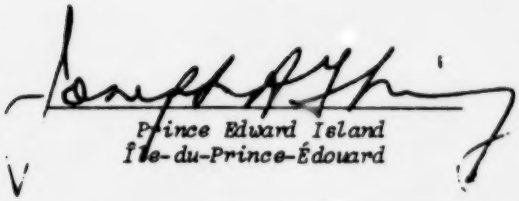
New Brunswick
Nouveau-Brunswick



Manitoba

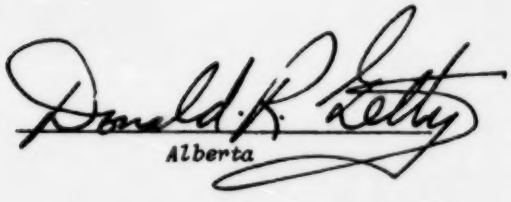


British Columbia
Colombie-Britannique

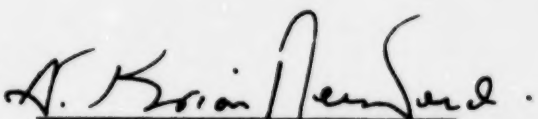


Prince Edward Island
Île-du-Prince-Édouard

Saskatchewan



Alberta



Newfoundland
Terre-Neuve

APPENDIX 2

MANITOBA TASK FORCE ON MEECH LAKE

SUMMARY OF RECOMMENDATIONS

A SUMMARY OF RECOMMENDATIONS

The Task Force is unable to recommend ratification of the 1987 Constitutional Accord in its present form. The Task Force therefore unanimously recommends that the Legislative Assembly take the appropriate action on the following six amendments to the Meech Lake Accord and on the following three recommendations which do not involve amendment.

RECOMMENDATIONS FOR AMENDMENT

1. Canada Clause

The Task Force recommends that clause 1 of the 1987 Constitutional Accord be ratified only in an amended form. The Task Force recommends that clause 1 of the Constitution Amendment, 1987 be amended as follows:

> 1. The Constitution Act, 1867 is amended by adding thereto, immediately after section 1 thereof, the following section:
>
> "2. (1) The Constitution of Canada shall be interpreted in a manner consistent with the recognition that the following constitute fundamental characteristics of Canada:
>
> (a) the existence of Canada as a federal state with a distinct national identity;
>
> (b) the existence of the aboriginal peoples as a distinct and fundamental part of Canada;

(c) the existence of French-speaking Canadians, centred in Quebec but also present elsewhere in Canada, and English-speaking Canadians, concentrated outside Quebec but also present in Quebec;

(d) Quebec constitutes within Canada a distinct society; and

(e) the existence of Canada's multicultural heritage comprising many origins, creeds and cultures.

(2) The role of the Parliament **and Government** of Canada and the provincial legislatures **and governments to uphold** the fundamental characteristics of Canada referred to in paragraphs (1)(a), (b), (c) and (e) is affirmed.

(3) The role of the legislature and Government of Quebec **to uphold** the distinct identity of Quebec referred to in paragraph (1)(d) is affirmed.

(4) Nothing in this section derogates from the powers, rights or privileges of Parliament or the Government of Canada, or of the legislatures or governments of the provinces, including any powers, rights or privileges relating to language."

2. Rights Protection Clause

The Task Force recommends that clause 16 of the 1987 Constitutional Accord be ratified only in an amended form. The Task Force recommends that Clause 16 be amended as follows:

16. Nothing in section 2 of the Constitution Act, 1867 affects the **Canadian Charter of Rights and Freedoms**, section 35 of the Constitution Act, 1982 or class 24 of section 91 of the Constitution Act, 1867.

3. Supreme Court

The Task Force recommends that clause 6 of the 1987 Constitutional Accord be ratified only in an amended form.

The Task Force recommends that Clause 6 of the Meech Lake Accord be changed as follows:

> **101C.** (1) Where a vacancy occurs in the Supreme Court of Canada, the government of each province **or territory** may, in relation to that vacancy, submit to the Minister of Justice of Canada the names of any of the persons who have been admitted to the bar of that province or territory and are qualified under section 101B for appointment to that court.
>
> (2) Where an appointment is made to the Supreme Court of Canada, the Governor General in Council shall, except where the Chief Justice is appointed from among members of the Court, appoint a person whose name has been submitted under subsection (1) and who is acceptable to the Queen's Privy Council for Canada.
>
> (3) Where an appointment is made in accordance with subsection (2) of any of the three judges necessary to meet the requirement set out in subsection 101B(2), the Governor General in Council shall appoint a person whose name has been submitted by the Government of Quebec.
>
> (4) Where an appointment is made in accordance with subsection (2) otherwise than as required under subsection (3), the Governor General in Council shall appoint a person whose name has been submitted by the government of a province **or territory** other than Quebec.
>
> **101D.** Sections 99 and 100 apply in respect of the judges of the Supreme Court of Canada.
>
> **101E.** (1) Sections 101A to 101D shall not be construed as abrogating or derogating from the powers of the Parliament of Canada to make laws under section 101 except to the extent that such laws are inconsistent with those sections.
>
> (2) For greater certainty, section 101A shall not be construed as abrogating or derogating from the powers of the Parliament of Canada to make laws relating to the

reference of questions of law or fact, or any other matters, to the Supreme Court of Canada."

The Task Force further recommends that the First Ministers review the appointment process at a future constitutional conference with attention to the concerns raised by Manitobans.

4. Spending Power

The Task Force recommends that the 1987 Constitutional Accord be ratified only in an amended form. The Task Force recommends that section 7 be deleted from the Meech Lake Accord.

5. Amending Formula

The Task Force recommends that Clause 9 of the 1987 Constitutional Accord be ratified only in an amended form. The Task Force recommends that Clause 9 of the Meech Lake Accord be changed as follows:

9. Sections 40 to 42 of the Constitution Act, 1982 are repealed and the following substituted therefor:

"40. Where an amendment is made under subsection 38(1) that transfers legislative powers from provincial legislatures to Parliament, Canada shall provide reasonable compensation to any province to which the amendment does not apply.

41. An amendment to the Constitution of Canada in relation to the following matters may be made by proclamation issued by the Governor General under the Great Seal of Canada only where authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province:

(a) the office of the Queen, the Governor General and the Lieutenant Governor of a province;

(b) the right of a province to a number

of members in the House of Commons not less than the number of Senators by which the province was entitled to be represented on April 17, 1982;

(c) the principle of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada;

(d) subject to section 43, the use of the English or the French language;

(e) the Supreme Court of Canada;

(f) an amendment to this Part."

42. (1) An amendment to the Constitution of Canada in relation to the following matters may be made only in accordance with subsection 38(1):

(a) the powers of the Senate and the method of selecting Senators;

(b) the number of members by which a province is entitled to be represented in the Senate and the residence qualifications of Senators;

(c) the extension of existing provinces into the territories; and

(d) notwithstanding any other law or practice, the establishment of new provinces.

(2) Subsections 38(2) to (4) do not apply in respect of amendments in relation to matters referred to in subsection (1).

The Task Force suggests that the corresponding Clauses 10, 11, and 12 should be deleted from the Constitution Amendment, 1987.

In accordance with the Task Force recommendations on the Amending Formula, subsection (2) of section 25 should read:

(2) Until an amendment to the Constitution of Canada is made in relation to the Senate pursuant to section **42** of the Constitution Act, 1982, the person summoned to fill a

vacancy in the Senate shall be chosen from among persons whose names have been submitted under subsection (1) by the government of the province to which the vacancy relates and must be acceptable to the Queen's Privy Council for Canada."

6. Constitutional Conferences

The Task Force recommends that clause 13 of the 1987 Constitutional Accord be ratified only in an amended form. The Task Force recommends that clause 13 be amended as follows:

13. Part VI of the said Act is repealed and the following substituted therefor:

"Part VI

Constitutional Conferences

50. (1) A constitutional conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada at least once each year, commencing in the year this Amendment is proclaimed.

(2) The conferences convened under subsection (1) shall have included on their agenda the following matters:

(a) Senate reform, including the role and functions of the Senate, its powers, the method of selecting Senators and representation in the Senate;

(b) roles and responsibilities in relation to fisheries;

(c) constitutional matters that directly affect the aboriginal peoples of Canada, including the identification and definition of the rights of those people to be included in the Constitution of Canada; and

(d) such other matters as are agreed upon.

(3) The Prime Minister of Canada shall

invite representatives of the aboriginal peoples of Canada to participate in the discussions of the matters set out in the agenda pursuant to paragraph (c) of subsection (2).

(4) The Prime Minister of Canada shall invite elected representatives of the governments of the Yukon Territory and the Northwest Territories to participate in the discussions on any item on the agenda of a conference convened under subsection (1) that, in the opinion of the Prime Minister, directly affects the Yukon Territory and the Northwest Territories.

The Task Force recommends that the First Ministers revoke annual Constitutional Conferences once the items in subsection (2) have been resolved.

FURTHER RECOMMENDATIONS

1. Senate

The Task Force recommends the immediate creation of a Manitoba committee to study the question of Senate reform. The Task Force recommends that Senate reform be given top priority in future constitutional discussions. The Task Force recommends additional research into the following areas in preparation for the Constitutional Conferences on this issue; means of selecting Senators, methods of representation, number of Senators, powers, functions, relationship with the House of Commons, location, and possible abolition if reform proves impossible. The Task Force recommends that future constitutional discussions on Senate reform encompass these issues.

2. Immigration

The Task Force recommends that the federal government continue to play a leading role in the immigration process. Furthermore, the Meech Lake Accord provisions on immigration and agreements pursuant thereto should be reviewed at least

every five years with a view to their possible amendment or revocation. This recommendation does not involve a formal amendment to the Meech Lake Accord provisions on immigration.

3. The Constitutional Process

The Task Force recommends that public hearings be held at the federal and provincial levels of government after the first ministers develop a proposal for constitutional change and prior to the signing of the proposed constitutional change. The Task Force further recommends that if a province chooses not to hold public hearings, then the federal government should hold hearings within that province to give the public the opportunity to participate in constitutional reform.

APPENDIX 3

SELECT COMMITTEE ON THE 1987 CONSTITUTIONAL ACCORD

COMMITTEE'S RECOMMENDATIONS

CHAPTER V

PROCESS

Committee's Recommendations

Parliament and the legislative assemblies have a responsibility towards their electorate to study and to react to constitutional proposals put forward by the First Ministers. This process must be allowed to take place **before** the executive makes any definite commitments. Otherwise, the process would simply be undermined by the reality of party discipline.

Therefore, the Committee **recommends that the Legislative Assembly of New Brunswick establish a Standing Committee on Constitutional Matters to consult and advise both before and after First Ministers' Constitutional Conferences, and further the Committee recommends that the Province of New Brunswick urge the Parliament of Canada and the other Legislatures to establish similar Committees.**

CHAPTER VI

FUNDAMENTAL CHARACTERISTIC AND DISTINCT SOCIETY

Committee's Recommendations

After much reflection, the Committee has concluded that since multicultural and aboriginal clauses are presently entrenched in the Constitution Act 1982, and since these same clauses are protected by **Section 16 of the Accord**, these facts counter-balance any effect the new interpretative provisions could have had on those clauses. Our conclusion must not be interpreted as saying that those provisions of the Charter dealing with multicultural and aboriginal recognition could not or should not be integrated in Section 2(1) of the Accord. However, the Committee believes that these issues should properly be addressed at a future constitutional conference.

While the Committee concedes that the **fundamental characteristic** contained in paragraph 2(1)(a) represents the present linguistic and demographic reality of Canada, it cannot accept the territorial restrictions contained therein. The territorial element constitutes an unnecessary and limited vision of Canada which renders the Accord to be a reconciliation of the two linguistic majorities. There is no reason to minimize the recognition of English-speaking Canadians living in Québec or of French-speaking Canadians living outside Québec. As a nation, Canada should recognize the existence of French-speaking Canadians and English-speaking Canadians throughout the land without reference to territoriality.

Hence, **the Committee recommends that paragraph 2(1)(a) be amended to read:**

> ***The recognition that the existence of French-speaking Canadians and English-speaking Canadians throughout Canada constitutes a fundamental characteristic of Canada.***

Committee's Recommendations

The Committee believes that Section 2 of the Accord does not grant any new powers, nor does it derogate from existing powers which the provincial and federal governments presently enjoy. Section 2 is an **interpretive** tool which does not grant any **substantive powers**. Subsection 2(4) specifically declares that nothing in Section 2 derogates from the powers, rights or privileges otherwise enjoyed by the legislatures or the governments.

The Committee understands that Québec's recognition as a **distinct society** constitutes a fundamental aspiration and objective of its people and its government. For all of the above reasons, **the Committee accepts the distinct society clause.**

Committee's Recommendations

For these reasons, the Committee recommends that subsection 2(2) of the Accord be amended as follows:

2(2)(a)	***The role of the Parliament and Government of Canada to preserve and to promote the fundamental characteristic of Canada referred to in paragraph (1)(a) is affirmed.***
2(2)(b)	***The role of provincial legislatures to preserve the fundamental characteristic of Canada referred to in paragraph (1)(a) is affirmed.***

Linguistically, New Brunswick is a microcosm of Canada. The Committee believes that one aspect of our distinctness - the recognition of the equality of our two linguistic communities - should be recognized in the Constitution and that the Legislative Assembly and Government of New Brunswick should **preserve and promote** this characteristic. Our recommendations on this specific topic are contained in a later chapter of this report.

CHAPTER VII

THE ACCORD AND THE PARAMOUNTCY OF THE CHARTER

Committee's Recommendations

The Committee **recommends that the Canadian Charter of Rights and Freedoms be affirmed as a fundamental characteristic of Canada.**

CHAPTER VIII

THE ACCORD AND GENDER EQUALITY

Committee's Recommendations

The Committee concluded that what stands out from the presentations is the belief that those rights contained in Section 28 were won through the collective effort and persistence of many Canadian women and interest groups and that Section 28 of the Charter represents a **fundamental value** in our society. It must not be tampered with nor allowed to be taken for granted. It must never be diminished in the eyes of Canadians.

All those involved in the framing of the Accord have stated that it was not their intention to affect gender equality. The Committee **recommends, therefore that Section 28 of the Charter be added to Section 16 of the Accord which would then read:**

> ***Nothing in Section 2 of the Constitution Act 1867 affects Sections 25, 27 or 28 of the Canadian Charter of Rights and Freedoms, Section 35 of the Constitution Act, 1982 or class 24 of Section 91 of the Constitution Act, 1867.***

CHAPTER IX

SENATE APPOINTMENTS

Committee's Recommendation

The Committee recommends that amendments be made to subsections 25(1) and 25(2) giving the governments of the Yukon and the Northwest Territories a definite role in Senate nominations.

CHAPTER X

IMMIGRATION

Committee's Recommendation

The Committee therefore affirms the Accord's treatment of this issue.

CHAPTER XI

SUPREME COURT OF CANADA

Committee's Recommendations

The Committee recommends:

(i) ***the entrenchment of the institution, the Supreme Court of Canada, in the Constitution;***

(ii) ***that at least three judges of the Supreme Court of Canada shall be from Québec;***

(iii) ***that the territories be added to subsection 101C(1);***

(iv) ***that a formal appointment process be established in each province and territory to reflect a broad spectrum of the society and provide a federal as well as provincial contribution to the list of nominees and that the nominating Committee include representatives from the major constituencies that are concerned with the quality of the Canadian judiciary: the legal profession, incumbent judges, the federal Minister of Justice and the provincial Attorneys-General, and the public at large.***

CHAPTER XII

SHARED-COST PROGRAMS (SECTION 106A)

Committee Recommendation

Whereas the Committee is concerned that equalization (as contained in Section 36 of the Constitution Act 1982) has been eroded, it recommends that:

(i) ***the provisions of Section 36 of the Constitution Act, 1982, be strictly applied;***

(ii) ***Section 106A be accepted.***

CHAPTER XIII

THE AMENDING FORMULA (Sections 40 - 47)

Committee's Recommendation

The Committee recommends that:

(a) the unanimity rule not be required for subsection 41(i);

(b) that the territories should be consulted in the creation of new provinces.

CHAPTER XIV

CONSTITUTIONAL CONFERENCES (SECTION 50)

Committee's Recommendations

The Committee recommends deleting all references to specific agendae from planned inclusion in the Constitution.

The Committee also recommends that fisheries, aboriginal rights and senate reform become priorities in constitutional discussions.

CHAPTER XV

BILL 88 - AN ACT RECOGNIZING THE EQUALITY OF THE TWO OFFICIAL LINGUISTIC COMMUNITIES IN NEW BRUNSWICK

Committee's Recommendations

The Committee agrees that the time has come for a full constitutional recognition of New Brunswick's two linguistic communities and for the recognition of a constitutional obligation to preserve and promote them. It also believes that this should not be the sole responsibility of the Legislative Assembly and the Government of New Brunswick: responsibility should be extended to the Federal Parliament and Government of Canada.

Such a commitment from both Governments would ensure that all legislative matters are covered. It would provide a fundamental constitutional framework for the development of rational, comprehensive policies fostering further preservation and promotion of our two linguistic communities.

Therefore, the Committee recommends **that the Governments of New Brunswick and Canada immediately initiate the process for the entrenchment of the principles contained in An Act Recognizing the Equality of the Two Official Linguistic Communities in New Brunswick.**

CONCLUSIONS

In conclusion, the Committee **recommends that the Government of New Brunswick use this report and its recommendations as a basis of discussion for improving the 1987 Constitutional Accord.**